

## REMARKS

Applicants acknowledge the time and courtesy of Examiner Ildebrando during the personal interview of April 24, 2003, with Applicant's representative James E. Ruland. Particularly, it was discussed that if evidence was submitted distinguishing the catalyst of U.S. Patent No. 4,585,748 (Usui), it would be considered.

### Prior Art Rejections

Claims 1-2, 5-12 and 19-25 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Usui. Also claims 3 and 4 stand rejected under 35 U.S.C. § 103 over, respectively, Usui in view of U.S. Pat. No. 4,177,157 (Koepke) and Usui in view of U.S. Pat. No. 5,972,832 (Shi).

In the action and interview, it is alleged that given the method of preparation as taught by Usui, at least some of the metals would be inherently deposited on the matrix and zeolite. The action also asserted that at least some of the Group VI metal would be deposited in the zeolite. Thus, the action alleged that functional language asserted to be critical for establishing novelty of the claimed subject matter may be in fact an inherent characteristic of the prior art, and shifted the burden to Applicants to prove that the prior art does not possess the characteristics relied on.

Attached hereto is an unexecuted Declaration (an executed Declaration will be submitted shortly once received) providing evidence that a catalyst prepared according to the invention has clusters of molybdenum uniformly dispersed in the matrix while catalysts prepared according to Usui, have layers of MoS<sub>2</sub> on the external surface of the zeolite but not in the porous network of the zeolite. We appreciate that the electron micrographs are illegible in the copy of the declaration but wish that the Examiner to withhold final judgment until the original declaration can be submitted. Consequently, Applicants respectfully submit that this evidentiary showing provides the Examiner ample legal authority to withdraw these rejections, because the prior art does not teach or suggest a Group VIB metal in the porous network of the zeolite.

Moreover, the catalyst of the present invention and the catalyst according to Usui are made differently. Particularly, the catalyst of the present invention is made by impregnating a zeolite with a Group VIB metal in aqueous solution and then mixing with an alumina. In marked contrast, the catalyst of Usui is made by combining the zeolite and matrix and then adding the

metal component (column 8, lines 11-29).

What is more, the catalyst of the present invention yields significant and unexpected results. A comparison at pages 28 – 29 of the present specification demonstrates that Catalyst C (relevant to the present invention) provides a better conversion level of a fraction 380°C<sup>plus</sup> than Catalyst A (relevant to Usui). Consequently, this further demonstrates the patentable distinction between catalysts of the present invention and Usui.

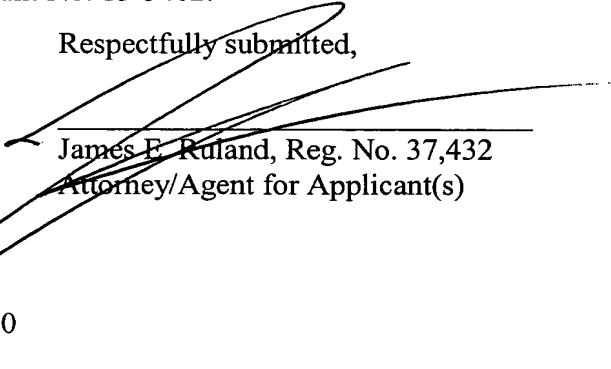
#### Claim Rejections Under Non-Statutory Double Patenting

Claims 1-12 and 19-25 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-11 and 22 of co-pending application number 09/603,837. Applicants respectfully submit that if this provisional double patenting rejection is the only rejection remaining in the case, the rejection should be withdrawn with respect to the present application to permit this application to issue. See M.P.E.P §804.

In view of the above remarks, favorably reconsideration is courteously requested. If there are any remaining issues that can be expedited by a telephone conversation, the Examiner is courteously invited to telephone counsel at the number indicated below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

  
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Attorney Docket No.: PET-1866

Date: May 5, 2003

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